

COTTER CORP.

IBLA 91-227

Decided July 13, 1993

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring the Little Buckaroo No. 1 lode mining claim, CMC-214989, null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

2. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Where lands are withdrawn from location under the mining law, "subject to valid existing rights," the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands covered by unpatented mining claims. The withdrawal is not effective against the claimant's possessory right, but, if the withdrawal is still in existence at the time the claims are abandoned, the withdrawal becomes effective, eo instanti, as to the land covered by such claims, and future mining claim locations are precluded.

APPEARANCES: John C. Stewart, Esq., Denver, Colorado, for Cotter Corporation.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Cotter Corporation (Cotter) has appealed from a March 11, 1991, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring the Little Buckaroo No. 1 lode mining claim, CMC-214989, null and void

ab initio because it is situated on lands not open to appropriation under the mining laws. The basis for BLM's action was that at the time of location in 1986 the land embraced by the claim within the SE¼ of sec. 27, T. 47 N., R. 17 E., New Mexico Principal Meridian, Montrose County, Colorado, was withdrawn from mineral entry by Public Land Order No. (PLO) 459, dated March 25, 1948, 13 FR 1763, for use by the Atomic Energy Commission. 1/

On appeal, Cotter contends that PLO 459 was specifically made subject to valid existing rights and that at the time of the withdrawal the land in question was occupied by "valid existing unpatented claims, later abandoned." It argues that because the PLO did not contain a provision that the land to which valid existing rights had attached would become subject to the withdrawal upon abandonment of such rights, the withdrawal was never effective as to the land at issue. Thus, Cotter asserts, the land remains public domain available for the location of mining claims. In support of its position, Cotter refers to a March 30, 1987, letter to BLM from the Contracting Officer, Department of Energy (DOE), Grand Junction, Colorado, explaining that Cotter held a lease from DOE for PLO 459 lands in sec. 27 and that lands adjacent thereto (presumably the site of the Little Buckaroo No. 1 and sites of portions of the Little Buckaroo Nos. 2 and 3) were excluded from the PLO 459 withdrawal because certain mining claims, which he listed, existed at the time of withdrawal. The Contracting Officer indicated that DOE had considered such claims to be valid existing rights.

[1] The law is well established that mining claims located on Federal lands withdrawn from mineral entry on the date of location are null and void ab initio. David R. Clark, 119 IBLA 367, 368 (1991); Kathryn J. Story, 104 IBLA 313, 315 (1988), and cases cited therein. The issue presented by this case is when, if ever, the PLO 459 withdrawal became effective as to the lands in question.

There is no reason to doubt that the land in question was the subject of one or more unpatented mining claims at the time of the issuance of PLO 459. Likewise, there is no reason to doubt Cotter's assertion that such claims were later abandoned. Accordingly, Cotter makes no argument that its claim relates back to any pre-withdrawal location. Rather, it contends that such earlier locations prevented the withdrawal from attaching to the land and when the claims were abandoned, the land was then open to other location. Appellant's argument must be rejected.

1/ On the same day that BLM issued its decision declaring the Little Buckaroo No. 1 lode mining claim null and void ab initio, it sent a letter to appellant informing it that the Little Buckaroo Nos. 2 and 3 lode mining claims, CMC-214990 and CMC-214991, were partially located on lands subject to the same withdrawal affecting the Little Buckaroo No. 1. It did not, however, specifically declare those parts of those claims null and void ab initio. The present appeal relates only to the Little Buckaroo No. 1 lode mining claim.

[2] In Jack Stanley, 103 IBLA 392 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991), the Board disposed of an argument similar to that presented herein. In Stanley, Kirk Stanley had located mining claims in 1960. A 1972 PLO withdrew the lands embraced by the claims from mineral location. In 1980, Congress withdrew the lands embraced by those claims from mineral location, subject to valid existing rights. In 1983, BLM declared Kirk Stanley's claims abandoned and void for failure to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988). In 1986, Kirk Stanley's son, Jack, located his mining claims on the exact same lands occupied by his father's claims. BLM declared Jack Stanley's claims null and void ab initio. The Board, in rejecting Stanley's argument that his claims were excluded from the operation of the withdrawals because the lands had retained their mining character, stated at page 394:

The location of a mining claim does not remove the claimed lands from the ownership of the Federal Government or from management by authorized agencies of the Federal Government. United States v. Rizzinelli, 182 Fed. 675, 684 (N.D. Idaho 1910). Where lands covered by the mining claims are withdrawn from future entries "subject to valid existing rights," the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands covered by the mining claims. So long as the claims are valid, however, the withdrawal is ineffective as to the lands embraced by the claims. However, when the claims terminate, the withdrawal automatically becomes effective, eo instanti, to the lands covered by the entry, thus closing them to future entries. No further action is required to effect the withdrawal. See Jack Z. Boyd (On Reconsideration), 15 IBLA 174, 81 I.D. 150 (1974); Paxton J. Sullivan, 14 IBLA 120 (1973); Solicitor's Opinion, 55 I.D. 205, 208 (1935). [Emphasis in original.]

The Board also rejected an argument in Rick & Linda Anderson, 76 IBLA 212, 213 (1983), that claims relocated in 1980 "should date back to the initial entry onto the land in 1945, under the proviso of the Fort Mohave Act which saved valid existing rights." The Board held that the claimant must establish that a claim is an amended location, not a relocation, of a pre-withdrawal claim to establish the continued existence of valid existing rights. Id. In this case, Cotter made no assertion that its claim was an amendment of the earlier location.

Thus, the PLO 459 withdrawal attached to the land in question on March 25, 1948, subject to the valid existing rights represented by the then existing mining claims. When those claims were abandoned, the withdrawal became effective, eo instanti, as to those lands, and it stood as a bar to Cotter's location of the Little Buckaroo No. 1 claim in 1986. BLM properly declared that claim null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge